

AN ORDINANCE 101776

AUTHORIZING THE EXECUTION OF A CONTRACT FOR \$27,000.00 FROM THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) TO SUPPORT THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT (SAMHD) PUBLIC CENTER FOR ENVIRONMENTAL HEALTH (PCEH) OPERATION AND MAINTENANCE OF AIR QUALITY MONITORS FOR THE PERIOD DECEMBER 1, 2005 THROUGH AUGUST 31, 2006; ADOPTING THE PROGRAM BUDGET; AND APPROVING THE PERSONNEL COMPLEMENT.

* * * * *

WHEREAS, the San Antonio Metropolitan Health District (SAMHD) Public Center for Environmental Health (PCEH) was established to protect the environment of residents in San Antonio; and

WHEREAS, since air quality has a potential health impact, air monitoring and follow up measures to address the problems identified are important for this objective; and

WHEREAS, the Texas Commission on Environmental Quality (TCEQ), an agency of the State of Texas, proposes to contract with the City of San Antonio for PCEH to maintain and operate an established air monitoring station in southeast Bexar County located at Lake Calaveras in San Antonio, Texas; **NOW THEREFORE**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee is authorized to execute a contract with the Texas Commission on Environmental Quality (TCEQ) in the amount of \$27,000.00 to support the San Antonio Metropolitan Health District (SAMHD) Public Center for Environmental Health operation and maintenance of air quality monitors for the period December 1, 2005 through August 31, 2006. A copy of said contract is attached hereto and incorporated herein for all purposes as Attachment II.

SECTION 2. SAP Fund No. 26008000 entitled "NATRL RESRCE CONS'VN", Fund Center 3611230000, Cost Center 3611230002, Internal Order 136000000297 entitled "2005-06 Air Monitors Lake Calaveras" is hereby designated for use in accounting for the fiscal transactions of this project.

SECTION 3. The sum of \$27,000.00 is hereby appropriated in the above-designated fund and the budget set out in Attachment I is approved and adopted for entry on the City books.

SECTION 4. The two (2) personnel positions set out in Attachment I and incorporated herein are authorized for the activity shown thereon.

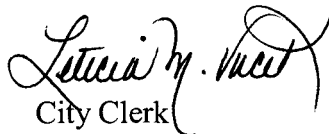
SECTION 5. The financial allocations in this ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, subject to concurrence by the City Manager, or her designee, may correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP internal orders and SAP GL Accounts as necessary to carry out the purpose of this ordinance.

SECTION 6. Should the grant awarded be in an amount other than that budgeted for, or should the grant contain terms and conditions different than those currently existing, acceptance of the grant, budget and corresponding personnel complement will be subject to subsequent City Council ordinance.

SECTION 7. This ordinance shall become effective on and after December 11, 2005.

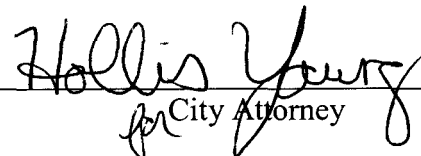
PASSED AND APPROVED this 1st day of December, 2005.

ATTEST:


City Clerk


M A Y O R
PHIL HARDBERGER

APPROVED AS TO FORM:


for City Attorney

ATTACHMENT I

San Antonio Air Monitoring - TCEQ

Fund 26008000

Fund Center 3611230000

Budget for period: 12/01/05 - 08/31/06

TCEQ Contract No. 582-6-72649

<u>ESTIMATED REVENUES</u>	<u>GL</u>	<u>CURRENT BUDGET</u>
Contract No. 582-6-72649	4501110	27,000
		<u>\$ 27,000</u>

APPROPRIATIONS

San Antonio Air Monitoring

Activity: 36-11-23

Cost Center 3611230002

Internal Order 136000000297 "2005-06 Air Monitors Lake Calaveras"

Regular Salaries & Wages	5101010	\$ 17,323
Social Security	5103005	1,330
Life Insurance	5103010	2,015
Flex Benefits	5104030	4,144
TMRS	5105010	32
Transportation	5203090	137
Indirect Costs	5406530	2,019
Grand Total		<u>\$ 27,000</u>

PERSONNEL COMPLEMENT

Activity: 36-11-23

Cost Center 3611230002

Internal Order 136000000297

Class No.	Title	<u>CURRENT POSITIONS</u>
0041	Administrative Assistant II (.25 FTE)	1
0870	Special Projects Coordinator (.25 FTE)	1
	Total:	<u>2</u>

Contract Number 582-6-72649

THE STATE OF TEXAS
COUNTY OF TRAVIS

AGREEMENT
INTERAGENCY/INTERLOCAL
CATEGORY I

Lake Calaveras Site Maintenance and Operation

Name of Project

THIS AGREEMENT is entered into by and between:

the Texas Commission on Environmental Quality, an agency of the State of Texas (hereinafter TCEQ),
and

The City of San Antonio, an agency or political subdivision of the State of Texas
(hereinafter PERFORMING PARTY),

pursuant to the authority granted and in compliance with applicable provisions of the Interagency Cooperation Act, TEX. GOV'T. CODE ch. 771 and Intergovernmental Cooperation Act, TEX. GOV'T CODE ch. 791.

TCEQ and PERFORMING PARTY, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

See attached Scope of Work.

ARTICLE 2. PRICING AND PAYMENT

See attached Contract Costs Budget (for payment based on reimbursement of actual costs) or Schedule of Fixed Rates (for payment at fixed rates based on the nearest practicable estimate of actual costs).

ARTICLE 3. MAXIMUM AMOUNT OF CONTRACT

The total amount of this Contract shall not exceed:

Twenty Seven Thousand Dollars and no cents

(Written amount)

\$ 27,000.00

(\$ numerical amount)

unless this Contract is amended in writing. It is expressly understood and agreed by the parties hereto that the performance on the part of the TCEQ of its obligations hereunder is contingent upon and subject to actual receipt by the TCEQ of sufficient and adequate funds from the sources contemplated by this Contract.

ARTICLE 4. TERM OF CONTRACT

This Contract shall begin on 12-1, 2005 or date of last contract signature, whichever is later, and shall terminate on full performance, which is due on 8-31, 2006, unless terminated early or extended in accordance with the terms of the Contract.

ARTICLE 5. CERTIFICATIONS

1. THE UNDERSIGNED CONTRACTING PARTIES do hereby certify that (1) the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the parties, (2) the proposed arrangements serve the interest of efficient and economical administration of State Government, and (3) the services, supplies or materials contracted for are not required by Section 21 of Article 16 of the Constitution of Texas to be supplied under contract given to the lowest responsible bidder.

2. The TCEQ further certifies that it has the authority to contract for the above services by authority granted in the Current Appropriations Act, and TEX. WATER CODE § 5.229.

3. PERFORMING PARTY further certifies that it has authority to perform the services contracted for herein.

ARTICLE 6. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire Contract between TCEQ and PERFORMING PARTY concerning the Work consist of the following:

1. Scope of Work

2. Project Representatives / Records Location

3. additional exhibits titled: Exhibit A - HUB Progress Assessment Report Form

Exhibit B - Release of Claims Form

4. One of the following (whichever is checked):

☒ Contracts Costs Budget

or ☐ Schedule of Fixed Rates

(If neither is checked, or both are checked, this Contract is *void*)

5. General Conditions

6. One of the following (whichever is checked):

☒ Federal Conditions

or ☐ DELIBERATELY OMITTED (Federal Conditions are **not** incorporated into this Contract)

(If neither is checked, or both are checked, this Contract is *void*)

There are no Contract Documents other than those listed above in this Article. The Contract Documents may be amended, modified or supplemented only as provided in the General Conditions. The undersigned bind themselves to the faithful performance of this Contract:

TCEQ:

Texas Commission on
Environmental Quality

By: _____

Authorized Signature

Printed Name

Title

Date: _____

Performing Party:

City of San Antonio

By: _____

Authorized Signature

Printed Name

Title

Date: _____

SCOPE OF WORK (SOW)

I. Facts/Purpose

A. Overview & Purpose

The TCEQ is proposing to contract for the service of maintenance and operation of the continuous and noncontinuous air monitoring station in southeast Bexar County at Lake Calaveras in San Antonio, Texas.

B. Facts or Assumptions

The Performing Party will maintain and operate the continuous and noncontinuous air monitoring station in southeast Bexar County at Lake Calaveras in San Antonio, Texas.

The Performing Party will adopt and perform all duties as specified in the TCEQ's National Air Monitoring Stations/State and Local Air Monitoring Stations Network and U.S. Mexico Border Support Activities (NAMS/SLAMS) Quality Assurance Project Plan (QAPP), TCEQ's QAPP for Air Monitoring of Particulate Matter of 2.5 Microns or Less in Texas, TCEQ's Ambient Monitoring Equipment Preventive Maintenance Manual, TCEQ's Ambient Air Quality Network Field Quality Control Manual and all applicable Standard Operating Procedures(SOP) depending on the specified network instruments.

II. TCEQ Responsibilities/Designation of Staff

A. TCEQ Responsibilities

1. Will provide all equipment and supplies as necessary to perform operation, maintenance, and troubleshooting of all continuous and noncontinuous equipment at the station.
2. Will provide initial training for operation maintenance, and troubleshooting of all continuous and noncontinuous equipment at the station.
3. Will provide instrument audits in accordance to the specific QAPP audit schedule.
4. Will provide all data validation and data management.
5. Will maintain ownership of all equipment.

B. Designation of Staff

The TCEQ contract manager is Kristin Bourdon, 512/239-0883.

III. Contractor Responsibilities

- A. Will adopt and perform all duties according to the TCEQ various QAPPs and Manuals depending on the monitor being maintained and operated.
- B. Will make routine visits to the site to check on systems operation and collect samples correctly to the specified QAPP requirements.
- C. Will contact TCEQ Project Representative or their designee before any instrument adjustments are to be accomplished to minimize possible instrument failure.
- D. Will provide appropriate response in a timely manner to TCEQ staff request regarding the air monitoring station operation, maintenance and data validation issues.
- E. Will identify a Project Representative, who will be authorized to receive directions from the TCEQ. This Project Representative must be knowledgeable in the planning, content, and subject matter being addressed in this monitoring program and must possess decision making ability and authority.
- F. Will provide phone, fax, email, pager and physical address of the project representative and any staff associated with the SOW.
- G. Will submit statements to the TCEQ for payment under this Agreement in accordance with Item 5 of the General Terms and Conditions.
- H. Will provide a quarterly report with workable hours and data completeness for the air monitoring station.

IV. Description of Deliverables

- A. **Task 1** - Maintain continuous and noncontinuous air monitors at the Lake Calaveras site according to the respective TCEQ QAPPs, Manuals, and SOPs.
- B. **Task 2** - Provide Quarterly Reports on workable hours and data completeness at the Lake Calaveras site.

V. Schedule of Deliverables

- A. **Task 1** shall be conducted from 12/1/05 through 8/31/06.
- B. **Task 2** shall be submitted to TCEQ contract manager within 30 days after each quarter. Quarters are in accordance with the State Fiscal Year which end as follows: February 28, 2006, May 31, 2006 and August 31, 2006.

VI. Acceptance Criteria

The Performing Party will be required to provide the TCEQ at least an 85% data completeness quarterly from each air monitor at the site or documentation why completeness was not achieved. Prorated payment will be made for completeness below 85%.

Contract Costs Budget

ARTICLE 1. BUDGET

1. Authorized budgeted expenditures under this Contract are as follows:

Personnel/Salary	\$ 17,323.00
Fringe Benefits	\$ 7,521.00
Travel	\$ 137.00
Supplies	\$
Vehicle	\$
Contractual.	\$
Utilities.	\$
Total Direct Costs	\$ 24,981.00
Authorized Indirect Costs	\$ 2,019.00
 Total Budgeted Costs	 \$ 27,000.00

ARTICLE 2. BUDGET CONTROL AND TRANSFERS

Cumulative transfers among the budgeted direct cost categories must not exceed ten percent (10%) of the current Total Budgeted amount.

ARTICLE 3. SUBMITTAL OF PAYMENT REQUESTS

Payment requests must be submitted at the interval specified below (whichever is checked; if none is checked, payment requests must be submitted monthly; if more than one is checked, invoices must be submitted when both requirements are met):

- ☐ monthly.
- ☐ upon completion of deliverables herein (see _____).
- ☐ upon completion of all Work.
- ☒ Other (specify) Quarterly.

PROJECT REPRESENTATIVES
RECORDS LOCATION

ARTICLE 1. PERFORMING PARTY

The term "PERFORMING PARTY" as used in this *Project Representatives / Records Location* means either PERFORMING PARTY or CONTRACTOR, as applicable.

ARTICLE 2. TCEQ PROJECT REPRESENTATIVE

The individuals named below are the TCEQ Project Representative, who are authorized to give and receive communications and directions on behalf of the TCEQ. All communications including all payment requests must be addressed to the TCEQ Project Representative (Edward Michel) or his or her designee.

Kristin Bourdon
(Name)
Engineering Specialist 165
(Title) (Mail Code)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Telephone No.: 512-239-0883

Facsimile No.: 512-239-1605

ARTICLE 3. PERFORMING PARTY PROJECT REPRESENTATIVE

The individual named below is the PERFORMING PARTY Project Representative, who is authorized to give and receive communications and directions on behalf of the PERFORMING PARTY. All communications to the PERFORMING PARTY will be addressed to the PERFORMING PARTY Project Representative or his or her designee.

Kyle Cunningham
(Name)

(Title)
2513 Kennedy Circle, Bldg. 180, Suite 105
(Mailing Address)
Brooks City-Base TX 78235
(City) (State) (Zip Code)

Telephone No.: 210/532-5471

Facsimile No.: 210/532-3747

ARTICLE 4. SUBMITTAL OF PAYMENT REQUESTS

Payment requests must be submitted to (whichever is checked):

☒ the TCEQ Project Representative.

☐ the TCEQ Disbursements Section.

(if neither box is checked, payment requests must be submitted to the TCEQ Disbursements Section).

ARTICLE 5. DESIGNATED LOCATION FOR RECORDS ACCESS AND REVIEW

The PERFORMING PARTY designates the physical location indicated below for record access and review pursuant to any applicable provision of this contract:

Public Center for Environmental Health
(Location)
2513 Kennedy Circle, Bldg. 180, Suite 105
(Mailing Address)
Brooks City-Base, TX 78235
(City) (State) (Zip Code)

TEXAS COMISSION ON ENVIRONMENTAL QUALITY (TCEQ)
GENERAL CONDITIONS

ARTICLE 1. WORK

PERFORMING PARTY agrees to provide the work described in and required by this Contract. In this Contract the term "Work" means the entire completed undertaking, or the various separately identifiable parts thereof. Work includes all goods, labor, services, materials and equipment provided in fulfillment of this Contract by any person or entity including PERFORMING PARTY's employees, agents, assigns, suppliers, and subcontractors.

ARTICLE 2. AMENDMENT

This Contract may be amended only by written agreement signed by both parties.

ARTICLE 3. INSURANCE

PERFORMING PARTY will require its contractors and their subcontractors to maintain insurance coverage sufficient to protect TCEQ against any and all claims that may arise out of or resulting from their performance of the Work and the other obligations undertaken in this Contract, and to maintain Workers Compensation Insurance which complies with Texas statutory requirements.

ARTICLE 4. ACCEPTANCE, CORRECTIONS, WAIVER, WARRANTY, QUALITY

1. Acceptance. All Work must be complete and satisfactory in the reasonable judgment of the TCEQ.
2. Corrections. PERFORMING PARTY will correct errors, omissions, and deficiencies at no charge to the TCEQ.
3. Waiver. No waiver, whether expressed or implied, shall be construed as a continuing waiver unless it is specifically described in writing as a continuing waiver.
4. Warranty. All warranties implied by law are applicable to the Work. Nothing in this Contract nor any action of the TCEQ will act as a disclaimer of any warranty. All warranties are for a period of ONE YEAR from the date of acceptance unless a different period is stated in this Contract or in a written warranty. PERFORMING PARTY expressly warrants that the TCEQ will receive the benefits of third-party warranties (whether manufacturer or supplier) applicable to the Work.
5. Quality. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract. If required by TCEQ, PERFORMING PARTY will furnish satisfactory evidence (which may include reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract.

ARTICLE 5. PAYMENT

1. Payment Methods. TCEQ will reimburse PERFORMING PARTY's allowable costs of providing Work which is satisfactory, accepted by TCEQ, and in conformity with all requirements of this Contract and applicable law.

2. Reimbursement of Actual Cost as Incurred. This Contract contains a *Contract Costs Budget* indicating expected contract-related costs for the required Work. PERFORMING PARTY will be paid on the basis of reimbursement of actual costs. At the intervals specified in the *Contract Costs Budget*, PERFORMING PARTY may submit a request for reimbursement of the actual costs it has incurred. All such requests must be accompanied by supporting documentation as required by this Contract. PERFORMING PARTY agrees that the TCEQ's obligation to reimburse the PERFORMING PARTY's costs will remain within the *Contract Costs Budget* and that cumulative transfers among the budgeted direct cost categories will not exceed ten percent (10%) of the total reflected therein.
 - a. If PERFORMING PARTY is a state agency as defined in GOV'T CODE, Chapter 791, then all reimbursement requests must be submitted to the TCEQ Project Representative on a State of Texas Interagency Transaction Voucher. All requests must be accompanied by a summary report or invoice showing the budgeted cost categories for the reported expenditures and indicating the amount remaining in each category.
 - b. If PERFORMING PARTY is not a state agency, then all reimbursement requests must be submitted to the TCEQ Project Representative with a completed TCEQ *Financial Status Report* (TCEQ Form 269a) and (as applicable) TCEQ *Supplemental Financial Status Report* Forms 269a-1, 269a-3, and 269a-4. A final *Financial Status Report* must be submitted no later than 90 days following the termination date of this Contract.
3. Timely Payment Requests Required. TCEQ may refuse to pay any request submitted more than 90 days after the termination of this Contract.

ARTICLE 6. SUBCONTRACTORS, OTHERS

1. Qualified Personnel. All employees and subcontractors employed by PERFORMING PARTY on or for the Work must have sufficient qualifications to perform the Work.
2. Objections. PERFORMING PARTY will not employ any particular subcontractor, supplier or other person or organization on or for the Work if TCEQ makes a reasonable written objection against such subcontractor, supplier, person, or organization. PERFORMING PARTY will not be required to employ any particular subcontractor, supplier or other person or organization if PERFORMING PARTY makes a reasonable objection.
3. Subcontracts. PERFORMING PARTY will include all provisions which may be necessary to accomplish all requirements of this Contract in its employment policies and contracts and its subcontracts, and shall require its subcontractors to do the same.

ARTICLE 7. INTELLECTUAL PROPERTY

1. License of Future Rights. With respect to any intellectual property which is conceived, developed, written, invented, first actually reduced to practice or otherwise produced by PERFORMING PARTY, its employees, subcontractors, or subcontractor's employees during the performance of the Work, PERFORMING PARTY hereby assigns to TCEQ a nonexclusive, perpetual, irrevocable, enterprise-wide license to use, copy, publish and modify such intellectual property and authorize others to do so for TCEQ purposes. Upon termination of this Contract, all data and information by PERFORMING PARTY will be furnished to TCEQ.

2. License of Existing Rights. PERFORMING PARTY grants to TCEQ a nonexclusive, perpetual, irrevocable, enterprise-wide license to use, copy, publish, and modify any intellectual property in the Work and to authorize others to do so for TCEQ purposes. PERFORMING PARTY shall secure all necessary intellectual property licenses from third parties and warrants that the Work and the intended use of the Work will not infringe any property rights of any third-party. PERFORMING PARTY agrees to require its contractors to indemnify and hold harmless TCEQ from damages arising from or related to any infringement of rights in intellectual property. ~~To the extent permitted by law, PERFORMING PARTY agrees to indemnify and hold harmless TCEQ from damages arising from or related to any infringement of rights in intellectual property.~~

COSA DATE
TCEQ DATE

ARTICLE 8. SEVERABILITY

The fact that a particular provision is held under any applicable law to be void or unenforceable in no way affects the validity of other provisions and the contract will continue to be binding on both parties. Any provision that is held to be void or unenforceable will be replaced with language that is as close as possible to the intent of the original provision.

ARTICLE 9. SUSPENSION; TERMINATION

1. For Cause. In the event of PERFORMING PARTY's failure to perform the Work as required by the Contract, violation of applicable law, substantial or material default, or other cause, TCEQ may suspend the Work or terminate this Contract for cause.
2. *Force Majeure*. In the event of delay or failure of performance caused by *force majeure*, TCEQ may terminate this Agreement in whole or part upon seven (7) days written notice.
3. For Convenience. TCEQ may terminate this Contract for convenience and without cause upon seven (7) days notice.
4. Payment Adjustment. If the TCEQ terminates for convenience or because of *force majeure*, PERFORMING PARTY shall be paid only for goods and services provided and necessary expenses incurred prior to termination.

ARTICLE 10. SURVIVAL OF OBLIGATIONS

All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with this Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion and acceptance of the Work and termination or completion of the Contract.

ARTICLE 11. LAWS AND REGULATIONS

PERFORMING PARTY shall give all notices and comply with all applicable law regarding the Work. Except where otherwise expressly required by applicable law, TCEQ shall not be responsible for monitoring PERFORMING PARTY compliance with any applicable law.

ARTICLE 12. AUDIT, ACCESS TO RECORDS

The PERFORMING PARTY shall maintain books and records concerning all Work under this Contract (including that performed by subcontractors), and shall retain them for at least three (3) years from the date of termination of this Contract. The TCEQ, the Texas State Auditor's Office, or any of their duly authorized representatives may review, audit, copy, or disclose the contents of such books or records at any time.

ARTICLE 13. MISCELLANEOUS

1. Except as otherwise provided in this Contract, PERFORMING PARTY will direct all communications with the TCEQ to the Project Representative designated by the TCEQ. The PERFORMING PARTY will designate a Project Representative to receive all communications from the TCEQ. Both Project Representatives will be designated in writing (see *Project Representatives / Records Location*).
2. "Time is of the Essence" will apply to all time limits stated in the Contract.
3. The PERFORMING PARTY will adhere to all applicable standards, principles and guidelines detailed in the Uniform Grant and Contract Management Standards (UGCMS), including those related to financial monitoring, auditing and record keeping.

ARTICLE 14. DELINQUENT STATE TAXES

The PERFORMING PARTY agrees that any payments due under this Contract will be applied towards any debt owed to the State of Texas. This requirement is not applicable to PERFORMING PARTIES who are state agencies as defined in Gov't Code, Chapter 791.

ARTICLE 15. REMEDIES AND SANCTIONS

1. In accordance with Chapter 2261 Texas Government Code, the following Schedule of Remedies applies to this Contract in the event of substandard performance or other failure to conform to the requirements of the Contract or applicable law.
 - a. Reject the substandard performance and request corrections without charge to the TCEQ.
 - b. Issue a notice of substandard performance or other non-conforming act or omission.
 - c. Request and receive the return of any over payments or inappropriate payments.
 - D. Reject associated reimbursement requests and suspend payments, pending accepted revision of substandard performance or non-conformity. Note: Funds may be retained by TCEQ for recovery of administrative costs or returned to funding source as authorized by agreements with the funding source and by state or federal law.
 - E. Suspend all or part of the Work, pending accepted revision of substandard performance or non-conformity.
 - F. Terminate the contract, demand and receive: return of all equipment purchased of contract funds, return of all unexpended funds, and repayment of expended funds.
2. If the TCEQ finds the PERFORMING PARTY's performance to be substandard, TCEQ may provide its written evaluation report to other governmental entities at any time. TCEQ may also provide its written evaluation report to the public as authorized by law.
3. TCEQ may avail itself of any remedy or sanction provided in this Contract or in law to recover any losses rising from or caused by the PERFORMING PARTY's substandard performance or any non-conformity with the Contract or the law. The remedies and sanctions available to TCEQ in this contract shall not limit the remedies available to the TCEQ under law.

ARTICLE 16. DISPUTES, CLAIMS, REMEDIES

Continuing the Contract Activities. Performing Party shall carry on the Contract Activities and adhere to the progress schedule during all disputes or disagreements with TCEQ unless ordered to stop the Contract Activities. No Contract Activities shall be delayed or postponed pending resolution of any disputes or disagreements.

Payment not a Release. Neither payment by TCEQ nor any other act or omission other than an explicit written release constitutes a release of Performing Party from liability for losses under this Contract.

Cumulative Remedies. The rights and remedies provided to the TCEQ in this Contract, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available under state and federal rules, regulations, and laws and at common law.

ARTICLE 17. INSURANCE AND INDEMNIFICATION

Insurance. Unless prohibited by law, the Performing Party shall require its contractors and suppliers to obtain and maintain during the Contract Term adequate insurance coverages sufficient to protect the Performing Party and the TCEQ from all claims and liability for injury to persons and for damage to property arising from the Contract, whether caused by the Performing Party or by the contractor(s) or by anyone directly or indirectly employed by either. The Performing Party shall insure the activity of its contractor in Performing Party's own policies. Unless specifically waived by the TCEQ, sufficient coverages shall include but are not limited to Workers Compensation and Employer's Liability Insurance, Commercial Automobile Liability Insurance, and Commercial General Liability Insurance.

Indemnification. To the extent authorized by law, the Performing Party shall require all contractors performing the Contract Activities on behalf of Performing Party to indemnify, defend, and hold harmless the TCEQ and Performing Party and their officers, employees and representatives from and against all losses, liabilities, damages, and other claims of any type arising from the performance of the Contract Activities by the Performing Party or its contractors, suppliers and agents, including those arising from a defect in design, workmanship, materials, or from infringement of any U.S. or foreign patent, trademark or copyright; or from a breach of applicable laws, regulations, safety standards or directives regardless of whether such acts or omissions are negligently or recklessly performed. The defense of the TCEQ shall be subject to the authority of the Office of the Attorney General of Texas to represent the TCEQ. This covenant survives the termination of the Contract.

ARTICLE 18. RELEASE OF CLAIMS

Upon satisfactory completion of the work performed hereunder and prior to final payment under this Agreement for such work, or prior to settlement upon termination of this Agreement and as a condition to final payment/settlement, the PERFORMING PARTY shall execute and deliver to the TCEQ a release of all claims against the TCEQ arising under or by virtue of this Agreement.

ARTICLE 19. BANKRUPTCY CLAUSE

If the Contractor files for bankruptcy, immediately notify TCEQ in writing according to the Notice provisions AND send notification directly to TCEQ Bankruptcy Program. The Contractor's notice to the bankruptcy program must include the appropriate contract number(s).

HUB Progress Assessment Report (PAR)

Part A. Identifying Information.

1. TCEQ Contract No.: _____ 2. Your Invoice No.: _____
3. Work Order No. (if applicable) _____ 4. For work completed between ____/____/____ and ____/____/____
5. Prime Contractor ("You"): _____ 6. Prime Contractor Vendor ID #: _____
7. Contact: _____ 8. Phone: (____) _____ - _____ 9. Is the Prime Contractor a Texas certified HUB and performing at least 25% of the total value of the contract? Yes___ No___

Part B. Invoice and HUB Subcontracting Information.

10. ☐ If you have used no subcontractors this period, check here.

Name and Address of HUB Subcontractor	Vendor ID No.	Type of HUB	Provided:	Value of this subcontractors participation for this invoicing period
		<input type="checkbox"/> MBE <input type="checkbox"/> WBE	<input type="checkbox"/> Services <input type="checkbox"/> Commodities	\$
		<input type="checkbox"/> MBE <input type="checkbox"/> WBE	<input type="checkbox"/> Services <input type="checkbox"/> Commodities	\$
Total				\$

* If subcontractor's services include both labor and materials, check "services" only.

Note: If you need room to list more subcontractors, enter this information on a plain sheet of paper and attach it to this form.

11. Total of invoice: \$ _____
12. Total of invoice from certified HUB subcontractors: \$ _____
13. Percent of HUB expenditures for this invoice: _____ %
(line 11 ÷ line 10) x 100
- Part C. HUB Subcontracting Information**
14. Total amount invoiced to date: \$ _____
15. Total HUB expenditures for contract to date: \$ _____
16. Percent of HUB expenditures for contract to date: _____ %
(line 15 ÷ line 14) x 100
17. HUB subcontracting goal for this contract: _____ %

Part D. Affirmation. The information provided on this form is complete and correct. *Your representative must sign here:*

18. Signature: _____ 19. Date: _____

Part E. Other Information. *For TCEQ use only. (Project manager: Complete this box and sign.)*

Type of funding: ☐ State ☐ Federal ☐ Both

Index: COBJ:

Fund No. _____

Date In: ____/____/____ PCA Code(s) _____

Check if prime contractor is one of the following:

☐ River Authority ☐ COG ☐ Local govt. ☐ Interlocal

Signature: _____

General Information

The purpose of this form is to help the Texas Commission on Environmental Quality (TCEQ; "us") to track the value of business we do with Texas-certified "historically underutilized businesses" (HUBs) and federally designated "minority- or woman-owned business enterprises" (MWBEs). In this form, the acronym "HUB" refers to both of these classes of businesses.

Do I Have to Complete This Form?

If we have awarded you a contract to provide us with professional services, other services, or commodities *and* your contract contains a subcontracting plan, then you must complete this form each time you submit an invoice or set of invoices to us—even if no subcontracting occurred during the period covered by these invoices.

If you are a HUB, you must perform at least 25 percent of the total value of the contract with your own or leased employees as defined by the Internal Revenue Service in order for the agency to receive 100 percent HUB credit for the entire contract. You may subcontract up to 75 percent of the contract with HUBs or non-HUB subcontractors, but you must report to us the value—both dollar amount and percentage—of your contract that was actually performed by you and your subcontractors during each invoicing period.

Where Do I Turn This Form in?

When you have completed this form, attach it to your invoices and submit it to our project manager for your contract.

Where Can I Get More Answers?

If you have any other questions, call the project manager named on your contract or our HUB Program Director (512/239-1273).

Definitions

These brief definitions may help you complete this form. For terms where a full legal definition may be helpful, we have cited the rule or law that gives that definition..

Commodities—materials, supplies, or equipment. May include consumable articles (for example, office supplies) or durable items (for example, computers, furniture, or equipment).

Other services—all services other than construction and professional services, including consulting services (Texas Government Code, Chapter 2254, Subchapter B).

Prime contractor (or "prime")—any business, agency, or individual who provides commodities or services to us under a purchase order or other contract.

Professional services—services of accountants, architects, engineers, land surveyors, optometrists, and physicians (Texas Government Code, Chapter 2254, Subchapter A).

Services—(1) functions performed for us by an outside source—for example, equipment repair, consulting, hazardous waste disposal, or work by short-term temporary employees.
(2) similar functions performed for the prime contractor by an outside source.

Subcontractor—any business, agency, or individual (other than an employee) who provides commodities or services to the prime contractor.

Total contract (Item 14)—on this form, total value of your contract with us, including all monetary amendments, if any.

Vendor ID No.—the 11-digit taxpayer identification number assigned to this subcontractor by Comptroller of Public Accounts. The subcontractor should be able to provide you with this number.

Instructions

1. TCEQ Contract No. - Enter the contract number we have assigned to this contract. This number appears on the first page of the contract
2. Your Invoice No. - Enter your invoice number for each invoice you are submitting with this form.
3. Work Order No. - If applicable, enter your work order number for the site, phase, or program.
4. For work completed between - Enter the period of time in which the work covered by these invoices was carried out.
5. Prime Contractor - Enter the name of the contractor to which we awarded this contract.
6. Prime Contractor Vendor ID# - Enter the 13-digit vendor identification number the Comptroller of Public Accounts has assigned the prime contractor.

7. Contact - Enter the name of the person authorized to complete this form for the prime contractor. We will contact this person if we have any questions about the information you have provided on this form.

8. Phone - Enter the phone number at which we can reach the contact person named in Item 7.

9. This percentage is applicable only when the prime contractor is a HUB.

10. HUB Subcontractor Information - *First column*—Enter the complete name of each HUB subcontractor. Enter information about this HUB subcontractor in the remaining columns of this row.

Second column—Enter the 13-digit vendor identification number the Comptroller of Public Accounts has assigned to this HUB subcontractor.

Third column—You have three options:

- If this subcontractor is a minority-owned business enterprise, check "MBE."
- If this subcontractor is a woman-owned business enterprise, check "WBE."
- If this subcontractor qualifies as *both* an MBE *and* a WBE, check *both* boxes.

Fourth column—Indicate, by checking the appropriate box, whether the subcontractor provided services or commodities. (If both, check "services" only.)

Fifth column—Enter the total of all invoices attached for this HUB subcontractor.

11. Total of invoice - Enter the total of *all* attached invoices

12. Total of invoice from certified HUB subcontractors - Enter the total amount of all attached invoices from HUBs.

13. Percent of HUB expenditures for this invoice - Use the instructions on the PAR form to calculate the percentage of this invoice that HUB subcontractors have completed.

14. Total amount invoiced to date - Enter the total of all invoices you have submitted to us to date for this contract, including the invoices attached to this PAR form.

15. Total of HUB expenditures on contract to date - Enter the total of all HUB subcontractor invoices for this contract to date.

16. Percent of HUB expenditures for contract to date - Use the instructions on the PAR form to calculate the percentage of this contract that HUB subcontractors have completed to date.

17. HUB Subcontracting goal for this contract - Your HUB goal is stated as a percentage in your contract. Enter your HUB goal here.

18. Signature - The person named in Item 5 must sign here as the representative of the prime contractor.

19. Date - Enter the date you completed this report.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Release of Claims

_____ hereby releases the Texas Commission on Environmental Quality (TCEQ), its officers, agents, and employees from any and all future claims arising under or by virtue of TCEQ Contract Number _____.

Further certifies that all subcontractors, suppliers, employees and any party which has performed or provided service for this contract has been paid in full and satisfied.

All services and tasks required to be completed under the referenced contract have been completed.

Prompt payment, therefore, of any and all funds which may have been "retained" by TCEQ in accordance with said contract is requested.

Executed on this _____ day of _____, 20__.

By: _____
(signature)

(name, typed or printed)

(title)